

Submitted by Counsel:

Ulysses D. Ware

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PRIORITY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ULYSSES THOMAS WARE,
PETITIONER,

VS.

WARDEN DARLEEN DREW,
BUREAU OF PRISONS,
ATLANTA PRISON CAMP.
RESPONDENTS.

CASE #: 12-CV-

1:12-cv-4397

EMERGENCY PETITION FOR IMMEDIATE RELEASE
28 USC §2241: PETITION FOR A WRIT OF HABEAS CORPUS
ACTUAL AND FACTUAL INNOCENCE OF ALL CHARGES

Memorandum of Law #10

U.S. Attorney (SDNY) Brady, Giglio, and Jencks Act violation; Mooney/Napue
Deliberate deception by Michael J. Garcia, Alexander H. Southwell, Nicholas S. Goldin,
Steven D. Feldman, Andrew L. Fish, Katherine Polk-Failla, Maria E. Douvas, Alexander
J. Wilson, Sarah E. Paul, Preet Bharara, David Kelly, Robert W. Sweet, Leonard B. Sand,
and William H. Pauley, III.

State of Georgia
 City of Atlanta
 County of Fulton
 08/16/2012

Statement of Indisputable Material Facts to which there
 is No Opposition.

I, Ulysses Thomas Ware, being of the age of majority, and having personal knowledge of the facts, under oath and pursuant to the penalty of perjury, hereby make this Declaration pursuant to 28 USC §1746 and state the following facts:

¶1

Securities and Exchange Commission, (the "SEC") lawyer Jeffrey B. Norris, Esq. (an officer of the court), on or around 07/14/2003 emailed Jeremy Jones from Norris' SEC email account informing Jones that he would not be added to the SEC's Las Vegas litigation (SEC v. Small Cap Research Group, Inc., et al., 03-0831-KJD-RJJ (D. NV), ("0831")).

¶2

Mr. Norris informed Jones that he was not added to the SEC's 0831 suit stating:

Mr. Jones you were not added to the Las Vegas litigation because the SEC believed your sworn deposition testimony that you were and the other employees of Mr. Ware [Carlton Epps, Myron Williams, Rick Sadler, and Charles H. Jackson, (the "Gov't Stooges")] were not involved in any conspiracy with Mr. Ware.

I am sure Mr. Ware will contact you seeking your assistance. Please your contact information current with in the event we need to talk to you again. (emphasis added), (the "SEC Brady Email").

¶3

The above SEC Brady Email has never been disclosed to Mr. Ware by either the SEC or the United States Attorneys Office (SDNY), (the "USAO"), before, during, or after trial in United States v. Ware, 05-Cr-1115 (WHP)(SDNY), ("1115"); or United States v. Ware, 04-CR-1224 (RWS)(SDNY), ("1224").

¶4

The SEC Brady Email constituted Brady (exculpatory) and Giglio (impeachment) evidence regarding the charges in 1115: The SEC Brady Email contradicted and undermined the USAO's trial theory there was a conspiracy between Mr. Ware and Jones; and impeached any credibility of the Gov't Stooges witnesses at trial in 1115, and contradicted the USAO trial evidence enabling the admission of hearsay evidence at trial in 1115.

¶5

In a sworn declaration dated 10/04/2005 (Dkt. #95:0831) at ¶4 SEC lawyer Norris stated, "I was contacted by Special Agent David Makol of the FBI about illegal

conduct of Thomas Ware" "some time after the Commission filed its Complaint [in 0831]." (emphasis added). (Appx. at 4).

Norris swore that S.A. Makol contacted him "about illegal conduct [the alleged illegal conduct was regarding the 12/22/2003 null and void referral of Mr. Ware because Mr. Ware refused to issue the fraudulent Rule 144(k) legal opinions to the 02-CV-2219 (LBS)(SDNY), ("2219"), plaintiffs. Cf. Norris and AUSA Southwell's 08/16/2004 emails (which AUSA stated in open court on 01/05/2007) (Dkt. #44, Tr. at 20 L 11-25): "[T]he entire SEC investigation occurred well before the U.S. Attorney's Office got any information that would lead it to begin an investigation. That information came from Judge Sand in December [22] of 2003 [Dkt. #80 in 2219 the null and void referral order; null and void because GPMT had filed for Chap. 7 on 12/03/2003 in Atlanta, GA -- 11 USC §362(a) voided the 12/22/2003 referral of Judge Sand referenced by AUSA Southwell. (Appx. at 10)] when he [Judge Sand] referred a criminal contempt matter to us [as a pretext]."

¶16

SEC lawyer Norris swore (Declr. at ¶4, Appx. at 2) that he supplied S.A. Makol with the 0831 Complaint containing the SEC's judicial admissions (Ex. at 17-18) which pled the United States out of court in both 0831 and 1115.

¶17

Therefore, according to Kyles, 514 U.S. at 437, Norris' admission that he supplied S.A. Makol with the 0831 Complaint which contained the SEC's judicial admissions (made on behalf of the United States -- the real party in interest) were binding on the SEC, the United States and its privies (S.A. Makol) and AUSA Southwell; and they are charged with knowingly preparing a false affidavit (Ex. at 9-13) on or about 09/20/2005, and submitting the same to magistrate Andrew J. Peck and procuring false and fraudulent arrest warrants for Mr. Ware, alleging (Aff'd at ¶6, Ex. at 11) there was "probable cause" when had Makol, Southwell, and Garcia understood the 0831 Complaint's ¶¶30, 31, and 33 (Ex. at 17-18), they would know that 0831 and 1115 were moot as of 07/14/2003 (the filing date of the 0831 Complaint), which by the way Norris now disowns (Dkt. ##167, 168 in 0831: Norris now claims -- since he is about to be sanctioned pursuant to Rule 11 for \$22.2 million -- that he did not actually sign the bogus and fraudulent 0831 Complaint, and further alleges that he does not know who actually signed the SEC's Complaint, go figure).

¶18

On 01/05/2007 in a conference in 1115 before District Judge Pauley (Dkt. #44 Transcript; Appx. at 10-17 excerpts) AUSA Southwell committed a fraud on the court, and committed perjury when Southwell lied (see beginning Appx. at 12 L 11 to Appx. at 17) Southwell knew of the emails to Norris (Ex. at 1-3), where Southwell provided

the SEC (Norris) with the null and void ab initio 12/22/2003 (Dkt.#80:2219) referral order (see Southwell's lies at Appx. at 10 L11-16 and throughout Appx. 11-12) from Jude Sand.

¶9

District Judge Pauley on 01/08/2007 (Dkt. #35, Ex. at 4-8) entered the Barasch Bribe Order based on the lies and perjury committed by both AUSA Southwell (an officer of the court to commit a fraud on the court), AUSA Feldman (who was also at the 01/05/2007 conference), S.A. Makol who lied in regard to his involvement in 0831 (once Makol contacted Norris (Norris' Declr at ¶4 "some time after the Commission filed [the 0831] Complaint") 0831 became a criminal investigation governed by the Fed. R. Crim. Proc., rather than the Fed. R. Civ. Proc., and terminated the SEC's statutory mandate (15 USC §§77t(b) and 78u(d)), and U.S. Attorney Michael J. Garcia, who approved Southwell and AUSA Nicholas S. Goldin seeking the 09/20/2005 (see Ex. at 9-13) fraudulent arrest warrants based on Makol's fraudulent affidavit (Ex. at 9-13).

¶10

United States v. Kordel, 397 U.S. at 1, 11-13 (1970) explained and delineated several "special circumstances" which would constitute a due process violation if committed by the government. In Kordel, 397 U.S. at 12 n.24 the Court noted that a due process violation would occur if the government "has failed to advise the defendant [the 0831 defendants] in a civil proceeding [0831] that it contemplates his criminal prosecution [1115 and 1224, cf. AUSA Southwell's (Ex. at 1-3) email dated 08/16/2004 where Southwell assisted the SEC and provided the case where Judge Sand entered the bogus referral order seeking Mr. Ware's criminal prosecution for not issuing the fraudulent Rule 144(k) legal opinions to the 2219 plaintiffs -- 15 USC §77b(a)(11) statutory underwriters."

¶11

Therefore, both the SEC and USAO knew on or before the 08/16/2004 email (Ex. at 1-3) that the USAO "contemplate[d] a criminal [] prosecution" of a defendant in the civil 0831 proceeding (Mr. Ware), and therefore, "special circumstances" existed, requiring the USAO and SEC to notify Mr. Ware, and the 0831 court a criminal prosecution was imminent, or that "any other special circumstances" existed in 0831.

The SEC nor the USAO notified any defendant in 0831 in regard to an imminent criminal prosecution in 1115 or 1224, which the USAO and Judge Sand used the null and void ab initio 12/22/2003 referral order as a pretext to give the USAO cover to access the 0831 files, which the USAO all long planned on the Vendetta Prosecutions against Mr. Ware for refusing to issue the fraudulent Rule 144(k) legal opinions to the 2219 plaintiffs, estimated at +\$18 million.

On and before 01/05/2007 AUSA Alexander H. Southwell, a purported magna cum laude graduate of Princeton, and a magna cum laude graduate of NYU Law School, committed perjury and perpetrated a "deliberate deception" on the court during the suppression hearing (a Mooney and Napue violation), cf. Carvajal v. Dominguez, 542 F.3d 561, 569 (7th Cir. 2008) (a Brady violation also occurs if the suppressed evidence [the SEC Brady Email, and the testimony of the SEC lawyers involved in 0831] could have affected the outcome of the suppression hearing by the suppression judge (Pauley, J.) altering his ruling (Pauley, J. was bribed by the SEC and USAO to suppress the crimes and collusion between the SEC and USAO in 0831 by not informing the 0831 defendant (Mr. Ware) his "criminal prosecution" was imminent)).

¶13

AUSA Southwell, AUSA Nicholas S. Goldin, and U.S. Attorney Michael J. Garcia, (the "DOJ Fraudsters") all perpetrated a "deliberate deception" on the suppression court (Pauley, J) on or about 01/05/2007 (see Appx. #2 at 1-19, Appx. at 10-11) AUSA Southwell (a magna cum laude graduate) submitted false and fraudulent pleading to the court (Dkt. #33, cf. with Southwell's perjury and lies on 01/05/2007 at Appx. #2 at 19 L16 to Appx. at 10).

¶14

The DOJ Fraudsters knew that their submissions (Dkt. #33) submitted to the Court on 01/04/2007 contained lies, perjury, a fraud on the court, and was submitted to cover up the SEC's and USAO's collusion, and conspiracy in the 0831 proceedings (a pretext to solely gather evidence to be used in 1115 and 1224: The SEC pled the United States out of court in 0831 and conversely and symmetrically, also pled the United States out of court in 1115 and 1224, i.e., the only purpose for the 0831 proceedings after 07/14/2003 was "solely to obtain evidence for its criminal prosecution[s] [1115 and 1224]." Kordel, 397 U.S. at 11-12 n.23.

¶15

The DOJ Fraudsters along with S.A. Makol have civil and criminal liability by recklessly assessing the SEC's judicial admissions (¶¶30, 31, and, 33) in the 0831 Complaint). Hart v. O'Brien, 127 F.3d 424, 443-45 (5th Cir. 1997) (deliberate suppression of exculpatory evidence (the SEC's Judicial Admissions in the 0831 Complaint, and the SEC's Brady Email to Jeremy Jones) by police (FBI and SEC) infers that the police (FBI and SEC) maliciously initiated and maintained the (1224 and 1115) prosecutions).

¶16

AUSA Southwell (a magna cum laude graduate) and AUSA Goldin (graduated #1 in his class at Cornell Law, and Editor-in-Chief of Cornell Law Review) certainly knew that Kordel, Id. at 11-12 n.23 and n.24 required their disclosure to the 0831

court and defendants -- "special circumstances" -- that a criminal prosecutions was imminent of Mr. Ware in 1115 and in 1224, based on the same bogus and fraudulent factual circumstances of the 0831 Complaint; circumstances which the SEC foreclosed on 07/14/2003 by pleading the United States out of court in 0831.

¶17

For the egregiousness of the Southwell's and the DOJ Fraudsters' lies and perjury one need look no further than the 01/05/2007 transcript (Appx. #2 at 19), the "deliberate deception" on the District Court -- who was willfully deceived by being in on the plan and scheme to violate Mr. Ware's due process rights.

AUSA Southwell took the podium and began one of the most risible and comical presentations ever in the history of the United States (suppressed only by AUSA Feldman's 10/12/2007 and 10/26/2007 (see S. Tr. 30-31, 34-40, 73-79) for AUSA Feldman's award winning performance (also Feldman is a magna cum laude graduate, must be something in water) performance which undoubtedly received an Oscar for the worst ever performance by an AUSA.

¶18

First, AUSA Southwell erroneously informed the Court (the "deliberate deception" the Mooney and Napue violations) as follows as Appx. #2 at 19 L 17-25:

I think at core there is not legal support [except Supreme Court authority, Kordel, 397 U.S. at 11-12 n.23, 24] for what Mr. Ware has asserted [see Appx. #2 at 2-19, that the USAO was required to give the 0831 defendants notice of the criminal investigation by the USAO during the 0831 proceedings] ... [t]here is no authority [except Kordel, and plethora of cases in the SDNY and EDNY] for this proposition that there is a duty [of the USAO and SEC] to inform people that they're under criminal investigation. The law [and here comes the "deliberate deception"] is not that. (emphasis added).

Either AUSA Southwell is the most incompetent assistant U.S. attorney (next to AUSA Feldman), or Southwell is a complete fool -- mostly likely an incompetent fool, remembering that Southwell graduate magna cum from Princeton and NYU Law, the only rational conclusion is that Southwell, the DOJ Fraudsters, and Judge Pauley are all wilfully incompetent ("deliberately deceived" themselves to commit a fraud on the court to cover up the SEC's and USAO crimes in the 0831 proceedings, which would have been exposed in a suppression hearing where Mr. Ware intended to call Spencer C. Barasch, District Judge Dawson, Norris, Hannan, Martin, and SAUSA Michael F. Bachner (Mr. Ware's terminated retained counsel).

¶19

The USAO, the SEC, and Judge Pauley knew they had a major problem once Mr. Ware

terminated his government agent retained lawyer (SAUSA Michael F. Bachner, Esq. (an officer of the court) on or about 10/04/2006 (Dkt. #21: Mr. Ware's entry of appearance in 1115 terminating Bachner).

Bachner was the eyes and ears of the USAO into the defense's strategies -- Bachner passed confidential trial strategies to the USAO, which then used the strategies to supersede the indictment on 09/14/2006 (Dkt. #19) adding Service Systems Int'l as a company Mr. Ware allegedly committed securities fraud on, yet during sentencing on 10/26/2007 AUSA Feldman admitted (S. Tr. at 46, Appx. #2 at 20 L 13-19) there was no securities fraud with respect to SVSY commenting:

With SVSY it is a little more complicated. The market was never informed of Mr. Ware's fraud [precisely because there was no fraud]. (emphasis added) (the "Feldman SVSY Admission"), cf. with government agent stand-by trial counsel Gary G. Becker's analysis of the Feldman SVSY Admission at S. Tr. at 64 L 16-21, Appx. #2 at 21), Becker conceded and agreed with Mr. Ware's argument there was no securities fraud with respect to SVSY; and given the SEC pled the United States out of court on 07/14/2003 (see Ex. at 17-18) admitting there was no securities fraud with respect to INZS, then why was the 1115 indictment superseded adding SVSY?

¶20

The 1115 indictment was superseded on 09/14/2006 (Dkt. #19) because SAUSA Bachner (Mr. Ware's retained lawyer) informed the USAO that the CEO of INZS (Thomas Vidmar) would testify for Mr. Ware at trial in 1115 there was no securities fraud in INZS press releases (remember the SEC conceded on 07/14/2003 at ¶¶30, 31, and 33 that contents of INZS' press releases were not actionable, civilly or criminally).

¶21

SAUSA Bachner informed Southwell, Goldin, and Garcia that the USAO's case was in the toilet regarding INZS, and they better do something fast, else Mr. Ware would win an acquittal at trial, which the USAO, the SEC, and Judge Pauley would not allow under any circumstances for Mr. Ware refusing to extort GPMT and issue the fraudulent Rule 144(k) legal opinions to the 02-CV-2219 (LBS)(SDNY), ("2219"), plaintiffs (admitted 15 USC §77b(a)(11) statutory underwriters, cf. ¶¶10-21 in the 2219 complt.).

¶22

Thus, the USAO, being probably the most incompetent lawyers in the DOJ, came up with the plan and scheme to supersede the 1115 indictment by adding SVSY. But there was one little problem with that scam: That being that the market for both INZS and SVSY's securities was not efficient (see District Judge Pauley 10/12/2007 ruling on that issue (S. Tr. at 31 L 17-25; Appx. #2 at 22) that the USAO's trial proof was,

insufficient "concerning among other things the efficiency of the market." (quoting Pauley, J. on 10/12/2007 at the purported sentencing hearing in 1115, after a jury allegedly found Mr. Ware guilty, yet after trial, the trial judge rules the government's trial proof was insufficient, Id.; the USAO agrees its trial proof was insufficient (S. Tr. at 36 L11-23, Appx. #2 at 23) -- precluding a "case" or "controversy" with respect to the insufficiency of the USAO's trial evidence, i.e., the trial judge's ruling in Mr. Ware's favor, and the USAO concession on the issue, was an acquittal of Mr. Ware on 10/12/2007, nunc pro tunc, 09/14/2006 (the date of the superseded indictment).

¶23

The reason SAUSA Bachner (Mr. Ware's retained lawyer referred by Edward T. M. Garland (ATL), was that SAUSA Bachner informed Mr. Ware when Mr. Ware demanded that he file a Kordel motion to suppress the SEC's and USAO evidence the following:

I cannot and will not file any motion to suppress against the SEC or the USAO ... they would punish me if I did that ... you can file it yourself ... but I would not do that if I were you ... Judge Pauley is going to kick your ass big time ... Judge Pauley is not a nice guy, he's not built like that. (emphasis added).

¶24

Clearly Bachner was conflicted and breached his duty of loyalty to Mr. Ware during 1115: Bachner colluded and conspired with the USAO, the SEC, and Judge Pauley to violate Mr. Ware's civil rights (18 USC §§241, 242, 371, 201, 1201-02, 1343, 1346, 1503, 1505, 1510, 1621-23, 1956-57, and 1961-64, (the "Racketeering Offenses")).

¶25

In fact Bachner knew that at the suppression hearing Mr. Ware intended to call as witnesses the SEC lawyers responsible for 0831 (Barasch, Norris, Martin, Hannan, and Webster, and District Judge Dawson) who were aware of the collusion and conspiracy between the SEC and USAO (see Ex. at 1-3 for the emails between the USAO and SEC during the 0831 proceedings, emails AUSA Southwell stated on 01/05/2007 (Appx. #2 at 12, 13, 14 L5-25, 15, 18); Appx. at 12-17, did not exist.

¶26

After Bachner was terminated the USAO, the SEC, and Judge Pauley were blind into the strategies Mr. Ware intended to use at trial, therefore when Mr. Ware filed the Kordel suppressions motions (Dkt. ##30, 31, 32, and 40), in Dec-Jan 2006-07, panic was induced in the USAO fearful the SEC's and USAO's collusion and conspiracy during 0831 would be uncovered by Mr. Ware (including the fact that the SEC and USAO had Mr. Ware illegally arrested on 09/01/2004 (see Ex. at 1-3) to prevent Mr. Ware from deposing SEC lawyer Webster, who possessed knowledge of the collusion and conspiracy between the SEC and USAO during 0831.

¶27

In around May-June 2007, after trial in 1115, a private investigator retained by Mr. Ware uncovered the bribe payment made by SEC lawyer Barasch's law firm (Andrews & Kruth, LLP) to Judge Pauley's alma-mater (Duke School of Law), during the pendency of 1115 titled "Friends of Duke."

¶28

The private investigator also discovered that Barasch and Bachner were co-counsel in a case before the USAO (SDNY) less than 9 months after Bachner refused to file the Kordel motions to suppress the SEC's evidence and conduct a suppression where Barasch was to be called as a witness, (see ¶23, supra), cf. with Dkt. #84 in 1115 for the details of the bribery of Judge Pauley by the SEC and USAO to cover up the crimes of the USAO and SEC in 0831, 1115, and 04-CR-1224 (RWS)(SDNY), ("1224").

¶29

On or about September 2010 Mr. Ware received an anonymous tip that government trial witness Jeremy Jone (one of the Gov't Stooges) was making statements how he fooled Judge Pauley and lied on the witness stand and had Mr. Ware convicted.

Jones was also reported to have said: "Judge Pauley that fool ... Kirton and Southwell ran a game on his dumb ass ... everybody knew that we were lying at the trial .-. I even played sick during the trial and they believed it."

Jones was also reported to have said that his lawyer (Marlin Kirton) had said that everyone in New York knows that Judge Pauley takes bribes all the times in his cases ... that's the only way you can win a case in Pauley's court.

¶30

Mr. Ware's retained lawyer Edward T.M. Garland, Esq., who referred Mr. Ware to Bachner, also informed Mr. Ware that he "could guarantee an acquittal for the right price ... \$1.0 million" in 1115 and 1224.

Garland had said, "in New York you have to pay to play ... that's how things work up there ... else you can plead guilty or take your chances with a jury."

I Ulysses Thomas Ware have made this Declaration under the penalty of perjury, and under oath, and pursuant to 28 USC §1746 in the city of Atlanta, GA this 16th day of August, 2012.



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